



Miccosukee Tribe of Indians of Florida

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Technical Oversight Committee
C/O Garth Redfield
South Florida Water Management District
3301 Gun Club Road
West Palm Beach, Florida 33416-4680

September 13, 2005

SUBJECT: Miccosukee Tribe's Comments Concerning Exclusion of May-June 2005 Data

Dear Sirs:

There are several troubling aspects to the unilateral decision by the State TOC Settling Parties (SFWMD and DEP) to exclude the data from the May and June 2005 sampling events in the Loxahatchee National Wildlife Refuge from the Settlement Agreement Report distributed at the last TOC meeting. The Tribe is even more troubled by the State TOC Settling Parties' telegraphed desire to permanently exclude the May/June data, which shows exceedences in Loxahatchee and would like the following technical issues to be addressed at the September 20th Special TOC meeting:

1. The State TOC Settling parties (SFWMD and DEP) have opined that they have analyzed the data using state approved QA/QC protocols and that it is the state agencies' prerogative to decide if the data is adequate for use. Statements have been made that if a challenge to the state decision to exclude the data is to be raised, it must be done through a Chapter 120 DOAH proceeding. Other statements were made that not only does DEP have the right to reject data, it has a legal obligation to reject bad data according to data screening procedures adopted by state rule.

While it is unclear what state process the parties are relying on, the state process is irrelevant. Data at the 14 stations of the Loxahatchee are being collected pursuant to the requirements of the federal Settlement Agreement, not pursuant to a state rule or the EFA. It is the Technical Oversight Committee (with a 4 out of 5 vote requirement) that is charged with determining the quality/adequacy of the data collected as a scientific oversight body; not only the DEP and SFWMD members (2 out of 5 unilateral vote / decision). Appendix D of the Settlement Agreement requires,

"The TOC will designate a panel for review, oversight and interpretation of the research and monitoring program. The purpose of the panel is to review QA/QC documentation and requirements for consistency and approve modifications necessary to insure accuracy and quality of data collection, analysis, and interpretation..." While the TOC is charged with reviewing the data and ensuring its accuracy and quality, it must make any recommendations it may have concerning the data to the principals of the Consent Decree. Ultimately, the Court overseeing the Consent Decree has the authority to review any recommendation of TOC, and decision of the principals, to ensure consistency with the terms of the Settlement Agreement.

2. The document entitled "Assessment of the Quality of May-June 2005 TP data and the Monitoring Processes for EVPA (LOX) Project", dated August 11, 2005, by D. Ivanoff seems to place a great deal of emphasis on the "high" Total Suspended Solids (TSS) values of the samples. However, there does not seem to be a consistent relationship between Total Phosphorous (TP) and TSS or the observance of flocculent material, as recorded in the field notes.

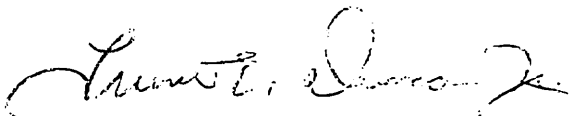
For example, the Lox 11 sample collected on February 7, 2005 shows at TP of 0.01 mg/l and a TSS value of 6 mg/l and notes that there was heavy floc; Lox 13, Lox 14 and Lox 15 all had similar results during the March 7, 2005 sampling event. In contrast, Lox 6 showed at 0.049 mg/l TP value and a light floc observance. Yet, the state parties seek to exclude the data from Lox 11 on this basis. This poor relationship exists because of an "after-the-fact" attempt to match quantitative laboratory measurements with qualitative field observations.

Additionally, the document entitled "Technical Support Document in Support of Data Quality Screening of Water Quality Data Collected During the May and June 2005 Monitoring Events for the EVPA (LOX) Project" presents a graphic showing a relationship between TSS and TP concentrations. The graphic attempts to show a relationship from the period January 2003 to July 2005. However, it seems that it would be more appropriate for the graphic to show the base period (1976-1983) plotted along with the May and June 2005 values. How else will the reader know if the TSS values fall outside those experienced in the base period?

3. Both papers mentioned above indicate that the total phosphorous values for the months of May and June 2005 were extraordinarily high. In fact, Figure 1 (enclosed) demonstrates that, contrary to this unsubstantiated assertion, the total phosphorous values experienced during the May and June 2005 sampling events are within acceptable limits of the base period data set.

The Tribe is looking forward to the quick resolution of these issues at the next TOC meeting.

Sincerely yours,



Truman E. Duncan, Jr.
Water Resources Director

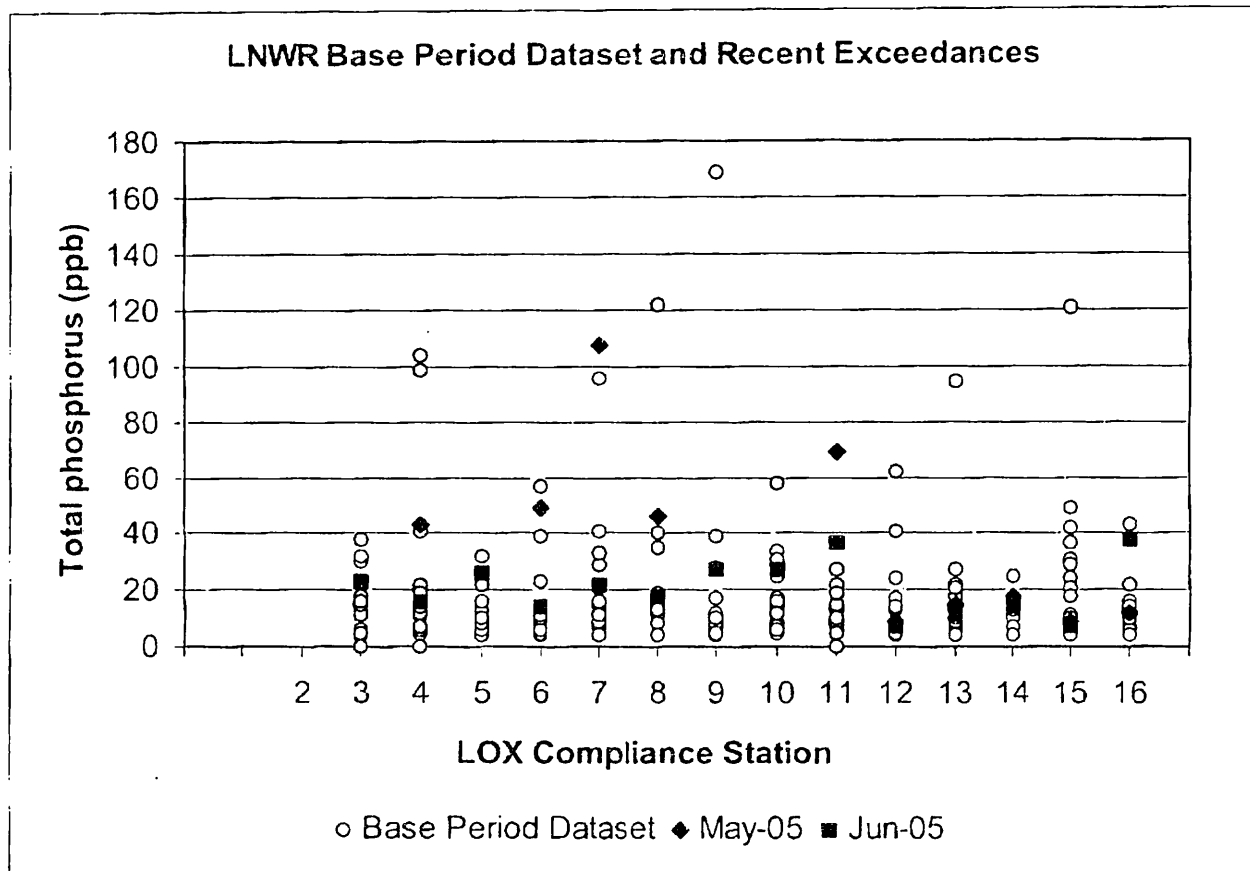
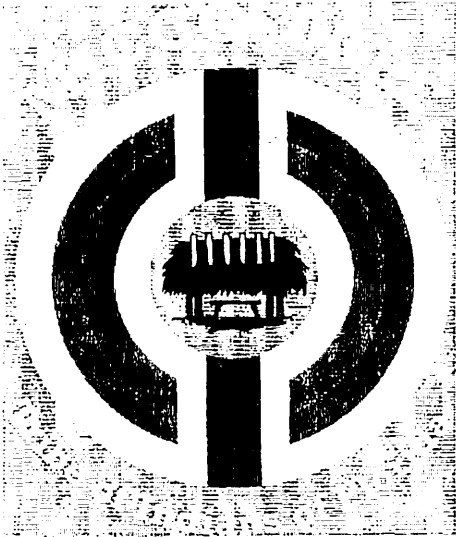


Figure 1: Scatter plot of TP data (ppb) used to develop formulas for interim and long-term Settlement Agreement compliance targets. Base period dataset is shown with open circles while recent excursions from May-2005 and June-2005 are shown with darkened symbols. Data from the recent exceedances (May, June 2005) are within acceptable limits of the base period dataset used to develop compliance equations and do not represent statistical outliers when considering interim limits.



FAX

MICCOSUKEE TRIBE WATER RESOURCES DEPT.

DATE: 9/16/05

TO: Garth Redfield

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FROM: Truman E. Duncan

NUMBER OF PAGES SENT: 4 (including cover sheet)

COMMENTS:

Please see attached documents.

If all pages are not received kindly phone Yusdeivis Nodarse (Judy), WR Sect.
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